

HOUSE No. 1991

By Mrs. Parente of Milford, petition of Marie J. Parente relative to the suspension of licenses to operate motor vehicles for refusal to take a blood test. Transportation.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT PROVIDING FOR LICENSE SUSPENSION FOR REFUSAL TO TAKE A BLOOD TEST AFTER ARREST FOR DRIVING UNDER THE INFLUENCE OF DRUGS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Paragraph (F) of subdivision 1 of section 24 of chapter 90 of
2 the General Laws, as appearing in the 2002 Official Edition, is
3 hereby further amended by adding the following subparagraph:—
4 (3) Whoever operates a motor vehicle upon any way or in any
5 place to which the public has right to access, or upon any way or
6 in any place to which the public has access as invitees or
7 licensees, shall be deemed to have consented to submit to a chem-
8 ical test or analysis of his blood in the event he is arrested for
9 operating a motor vehicle while under the influence of marijuana,
10 narcotic drugs, depressants or stimulant substances, all as defined
11 in section one of chapter ninety-four C; provided, however, that
12 no such person shall be deemed to have consented to a blood test
13 unless such person has been brought for treatment to a medical
14 facility licensed under the provisions of section fifty-one of
15 chapter one hundred and eleven; and provided, further, that no
16 person who is afflicted with hemophilia, diabetes or any other
17 condition requiring the use of anticoagulants shall be deemed to
18 have consented to a withdrawal of blood. Such test shall be
19 administered at the direction of a police officer, as defined in
20 section one of chapter ninety C, having reasonable grounds to
21 believe that the person arrested has been operating a motor

22 vehicle upon such way or place while under the influence of mari-
23 juana, narcotic drugs, depressants or stimulant substances.

24 If the person arrested refuses to submit to such test or analysis,
25 after having been informed that his license or permit to operate
26 motor vehicles or right to operate motor vehicles in the common-
27 wealth shall be suspended for at least a period of one hundred and
28 twenty days, but not more than one year for such refusal, no such
29 test or analysis shall be made and he shall have his license or right
30 to operate suspended in accordance with this paragraph for a
31 period of one hundred and twenty days; provided, however, that
32 any person who is under the age of twenty-one or who has been
33 previously convicted of a violation under this section or a like vio-
34 lation by a court of any other jurisdiction within ten years of the
35 date of the charge in question shall have his license or right to
36 operate suspended forthwith for a period of one hundred and
37 eighty days for such refusal; and provided, further, that any person
38 previously convicted two or more times for a violation under this
39 section or a like violation by a court of any other jurisdiction
40 within ten years of the date of the charge in question, shall have
41 his license or right to operate suspended forthwith for a period of
42 one year for such refusal. If a person refuses to take a test under
43 this section, the police officer shall do the following:—

44 (i) immediately and on behalf of the registrar take custody of
45 such person's driver license or permit issued by the common-
46 wealth;

47 (ii) provide each such person who refuses such test, on behalf
48 of the registrar, with a written notice of intent to suspend, on
49 forms prepared and provided by the registrar;

50 (iii) issue to each such person who refuses such test, on behalf
51 of the registrar, a temporary driving permit, unless: (1) driving
52 privileges of the person were suspended, revoked, or canceled at
53 the time the person was arrested; (2) the person whose license was
54 taken into custody was operating on an invalid license; (3) the
55 person was not entitled to driving privileges at the time of the
56 arrest for any other reason; or (4) the person holds a license or
57 permit granting driving privileges that was issued by another state
58 or jurisdiction.

59 The police officer before whom such refusal was made shall
60 immediately prepare a written report of such refusal. Such written

61 report of refusal shall be endorsed by a third person who shall
62 have witnessed such refusal. Each such report shall be made on a
63 form approved by the registrar, and shall be sworn under the
64 penalties of perjury by the police officer before who such refusal
65 was made. Each such report shall set forth the grounds for the
66 officer's belief that the person arrested had been operating a motor
67 vehicle on any such way or place while under the influence of
68 marijuana, narcotic drugs, depressants or stimulant substances,
69 and shall state that such person had refused to submit to such
70 chemical test or analysis when requested by such police officer to
71 do so. Each such report shall be endorsed by the police chief, as
72 defined in section one of chapter ninety C, or by the person autho-
73 rized by him and shall be sent forthwith to the registrar along with
74 the confiscated license or permit and a copy of the notice of intent
75 to suspend.

76 The license suspension shall become effective fifteen days after
77 the offender has received the notice of intent to suspend from the
78 police officer. No license shall be restored under any circum-
79 stances and no restricted or hardship permits shall be issued
80 during the suspension period imposed by this paragraph; provided,
81 however, that the defendant may immediately, upon the entry of a
82 not guilty finding or dismissal of all charges under this section,
83 section twenty-four G or twenty-four L, and in the absence of any
84 other drug related charges pending against said defendant, apply
85 for and be immediately granted a hearing before the court which
86 took final action on the charges for the purpose of requesting the
87 restoration of said license. At said hearing, there shall be a rebut-
88 table presumption that said license be restored, unless the com-
89 monwealth shall establish, by a fair preponderance of the
90 evidence, that restoration of said license would likely endanger
91 the public safety. In all such instances, the court shall issue
92 written findings of fact with its decision.

93 The registrar shall provide police departments and agencies
94 with permits for issuance as required by this subparagraph. The
95 registrar shall establish the form and content of permits described
96 in this section as the registrar determines appropriate, but in a
97 manner consistent with this section. A temporary driving permit
98 described in this section shall become effective twelve hours after
99 the stated time of such issuance and shall remain valid until the

100 fifteenth day after the date of arrest; shall be issued without pay-
101 ment fee; and, except as otherwise provided, such permit shall
102 grant the same driving privileges as those granted by the person's
103 license taken into possession under this subparagraph.